

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA-ABUJA
ON THE 28TH DAY OF SEPTEMBER 2021
BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI
PRESIDING JUDGE
SUIT NO: FCT/HC/CV/2830/2017

BETWEEN:

TINAMAT BIZCOM LTD

.....

PLAINTIFF

AND

1. KUJE AREA COUNCIL

2. CHAIRMAN OF KUJE AREA COUNCIL

}
}

DEFENDANTS

APPEARANCES:

PARTIES ABSENT

NICHOLAS UDEH ESQ. WITH C.F. OBI ESQ. FOR THE CLAIMANT

DEFENDANTS UNREPRESENTED

JUDGMENT

By her writ of summons and statement of claim filed on 12th September 2017, the Plaintiff claims against the Defendant as follows:-

- 1. An order of this Honourable court directing Kuje Area Council to pay the sum of ₦25,491,500.67 (Twenty Five Million Four Hundred and Ninety One Thousand Five Hundred Naira, Sixty Seven Kobo Only) to TinamatBizcom Limited being debt owed our client arising from the executed part of the contract works.**
- 2. An order of this Honourable Court directing the Defendants to provide our client with the evidence of payment of the 5% Federal Inland Revenue (FIRS) Value Added Tax (VAT) deduction on ₦61,994,000 totalling ₦3,099,700.00.**

- 3. An order of this Honourable court directing the Defendants to provide our client with the evidence of payment of the 5% Federal Inland Revenue (FIRS) Withholding Tax (WHT) deduction on ₦61,994,000.00 totalling ₦3,099,700.00.**
- 4. An order of this Honourable court directing Kuje Area Council to pay our client another sum of ₦3,221,160.00 (Three Million Two Hundred and Twenty Two Thousand One Hundred and Sixty Naira only) being accumulated retention now due from the executed contract works.**
- 5. 15% interest on the judgment sum per annum until full and final liquidation.**
- 6. ₦500,000 (Five Hundred Thousand Naira Only) being cost of this action.**
- 7. ₦1,500,000 (One Million Five Hundred Thousand Naira only) being cost of solicitor's fees.**

From the record of the court the Defendants were served the originating processes on 19th October 2017 and the matter was first litigated before Hon. Justice Balami at Gwagwalada Judicial Division of the FCT High Court.

Upon His Lordship's retirement, the matter was transferred to the Abuja Multi-Door Court House (AMDC) for Alternative Dispute Resolution.

Settlement having failed at the Abuja Multi-Door Court House the matter was transferred to this Honourable court upon the application of Emmanuel Ogunwe Esq., learned counsel for the Plaintiff.

The matter was thus fixed for hearing de novo on 2nd December 2020.

The Defendants despite hearing notice served on them, were absent on 2nd December 2020 without reason and filed no statement of defence.

The matter proceeded to hearing with the PW1 Matthew ChikezeIfenkwe, the Director of the Plaintiff. He adopted his witness statement on oath of 12th September 2017.

He testified inter alia that following the Plaintiff's success after a keenly contested bidding exercise, the Plaintiff was awarded a contract for the construction of Tukpeki Asphalt Road in Kuje Area Council at a total sum of ₦169,896,385.00 by the Defendants. See Exhibit P1 dated 17th October 2012.

The terms of the contract were specified in the Construction Agreement Exhibit P2. The Plaintiff accepted the contract in Exhibit P3, and he fully executed part of the contract for which the Defendants issued her a Number 1 Certified Interim Valuation Certificate dated 27th February 2013, covering ₦35,970,948.68. See Exhibit P4A. Of the sum however, the Defendants only paid ₦20 million leaving a balance of ₦15,970,948.67 unpaid till date.

The Plaintiff also executed another part of the road construction works for which the Defendants issued a Number 2 Interim Valuation Certificate covering ₦9,520,552.00. Though the Works, Survey and Audit Departments of the 1st Defendant have inspected the job, no certification was issued for it. See Exhibit P4B.

The Plaintiff sent a formal demand letter to the Defendants dated 14th April 2015 requesting for the settlement of the outstanding balance in the sum of ₦25,491,500.67. See Exhibit P5. The Defendants however failed to pay, despite several demands from the Plaintiff.

The Plaintiff further made demands for payments through its solicitor as well as a Pre-Action Notice dated 28th July 2017. See Exhibit P6 delivered via courier service, which the Defendants also ignored.

That in line with the Nigerian Tax Law, the Defendants are legally mandated to remit 5% of the due and payable contract amounting to ₦61,944,700.00 to Federal Inland Revenue Service as VAT in the value of ₦3,099,700.00; and another 5% as Withholding Tax (WHT) in the value of ₦3,099,700.00. That these tax amounts will be remitted directly to Federal Inland Revenue Services and the Plaintiff needs proof of such remittance to file her tax returns to the appropriate authority.

That the executed contract has an accumulated contract retention amount in the value of ₦3,221,160.00.

That the cost of prosecuting the action is ₦500,000.

That the Plaintiff engaged the legal services of UNIC Law Firm which charged ₦1,500,000 out of which the Plaintiff has deposited ₦800,000. See Exhibit P7.

That the Plaintiff's reputation has suffered damage as she struggles to meet her financial obligations due to the finances she committed to the project and the failure of the Defendants to pay for work done.

The Defendants did not appear in court to cross examine the witness. On application of the Plaintiff counsel, the court discharged the witness, foreclosed the defence and adjourned for adoption of final written addresses.

In the final written address of Emmanuel Ogunewe Esq. argued by Nicholas Udeh Esq. for the Plaintiff, a sole issue for determination was canvassed thus:-

“Whether the Plaintiff has made out a case entitling it to the reliefs sought?”

Learned counsel urged that the Plaintiff by credible evidence has discharged the onus of proof placed upon her by law whereas the Defendant's filed no defence and led no evidence to discredit the Plaintiff's case. Thus he urged the court to enter judgement in favour of the Plaintiff and to award the claim of solicitor's fees as the courts

are now in favour of awarding solicitor's fees where proved, having moved away from its earlier stand in **IHEKWOABA V ACB LTD** and **GUINNESS (NIG) PLC V NWOKE**.

Reliance was placed on several authorities including **IBRAHIM V OSUN (1998) 3 NWLR (PART 82) 271-272 per Obaseki JSC**; Order 15 Rule 1(2); Order 32 Rules of this Court; Section 131(1); 132 Evidence Act 2011; **DAGACI OF DERE V DAGACI OF EBWA (2006) 7 NWLR (PT 979) AT 382 @ 449 PARAS B-C**, per Tobi (JSC) of blessed memory; **NWABUEZE V NIPOST (2006) 8 NWLR (PT. 983) 480 @ 525**; **NAUDE V SIMON (2014) ALL FWLR (PART 753) CA 1878** per Akomolafe-Wilson JCA.

In the determination of this case I shall adopt the lone issue raised by the learned counsel to the Plaintiff (*supra*).

I have considered the only evidence and written and oral submissions before me which are that of the Plaintiff and her learned counsel.

As I had earlier indicated, despite service of the originating processes and hearing notice on the Defendants, the Defendants filed no statement of defence, neither did they adduce any evidence in this matter. They equally did not cross examine the Plaintiff's sole witness. They left the Plaintiff's case absolutely unchallenged and uncontroverted.

The law is trite that where the Defendant fails to adduce evidence, their own side of the imaginary scale remains weightless with nothing to tilt the proverbial scale which is heavily laden in one direction, to wit, on the side of the Plaintiff. The onus of proof on the Plaintiff therefore will be discharged on minimal proof.

See **ASAFA FOODS FACTORY LTD V ALRAINE (NIG) LTD & ANOR (2002) LPELR-570 (SC) AT 29 PARA C-D per Iguh JSC (as he then was)**; **ADEWUYI V ODUKWE (2005) LPELR-165 (SC)**; **OKOYE V TOBECHUKWU & ANOR (2016) LPELR – 41543 (CA) @ PG 10-11 PARA F-A Per Bolaji-Yusuff JCA**.

The Plaintiff tendered Exhibits P1-P6 in proof of her contract with the Defendants, the work done in part, and the amount owed the Plaintiff and her demand for payment of same. The Defendants were issued a Notice to produce:-

Exhibits P3 – Contract Award Acceptance Letter dated 7th November 2012;

Exhibit P4(A) – the Number 1 Certified Interim Valuation Certificate issued by the Area Council dated 27th February 2013;

Exhibit P4(B) – the Number 2 Interim Variation Certificate issued by the Area Council;

Exhibit P5 – the Demand Letter from Plaintiff to the 2nd Defendant dated 14th April 2015; and

Exhibit P6 – the Pre-Action Notice from Plaintiff’ solicitor to 2nd Defendant dated 28th July 2017.

The Defendants called no evidence to deny knowledge of these documents. They are deemed to have admitted the evidence led by the Plaintiff and the documents tendered.

Particularly, Exhibit P5 dated 14th April 2015 is a request for settlement of outstanding balance on the contract addressed to the 2nd Defendant received by P.A. Works Department Kuje. Therein the Plaintiff demanded the sum of ₦25, 491,500.67.

Also in Exhibit P6 sent by courier to the Defendants, the Plaintiff’s through her solicitor issued a pre-action notice to the Defendants of the claims before this court. There is a presumption that a letter sent by post was received by the addressee. The Defendants did not respond to the said letters. They did not deny receiving them either having adduced no evidence whatsoever in rebuttal of same.

The law is trite that where a party fails to respond to a business letter which by the nature of its contents requires a response or a refutation of some sort, that party will be deemed to have admitted the contents of the said letter. See **BELLVIEW AIRLINES LTD V FADAHUNSI**

& ORS (2015) LPELR -25915 (CA) PAGE 20-21 PARAS E-B per Uwani Musa Abba Aji JCA and at Pages 36-37 PARA E per Abiru JCA; SALE GWANI V EMMANUEL M. EBULE (1990) 5 NWLR (PT 149) P. 201 AT 217; ADVANCED COATING TECHNOLOGY (NIG)LTD V EXPRESS INTERNATIONAL PLANT HIRE (NIG) LTD (2019) LPELR-47883 (CA).

I find the evidence adduced by the Plaintiff to be credible, unchallenged and uncontradicted. And I act on it.

I therefore answer the sole issue in favour of the Plaintiff that the Plaintiff has proved her claims on a preponderance of evidence.

Accordingly, I enter judgment in favour of the Plaintiff against the Defendants for:-

- 1) An order directing the Kuje Council to pay the sum of ~~₦~~25,491,500.67 to the Plaintiff being debt owed the Plaintiff accruing from the executed part of the contract works.
- 2) An order directing the Defendants to provide the Plaintiff with the evidence of payment of the 5% Federal Inland Revenue (FIRS) Value Added Tax (VAT) deduction on ~~₦~~61,994,000 totalling ~~₦~~3,099,700.00.
- 3) An order directing the Defendants to provide the Plaintiff with the evidence of payment of the 5% Federal Inland Revenue (FIRS) Withholding Tax (WHT) deduction on ~~₦~~61,994,000 totalling ~~₦~~3,099,700.
- 4) An order of this Honourable court directing Kuje Area Council to pay the Plaintiff another sum of ~~₦~~3,221,160 being accumulated retention now due from the executed contracts.
- 5) Pursuant to Order 39 Rule 4 of the Rules of this court, 10% interest per annum on the judgement sum from today until the judgement sum is fully liquidated.

- 6) Costs of this action which I assess at ₦100,000 against the Defendants.
- 7) On solicitor's fees, the Plaintiff tendered Exhibit P7, a receipt for ₦800,000 out of ₦1,500,000 fees demanded by his solicitors. I do not think the amount claimed is excessive or unreasonable. On the authority of **NAUDE & ORS V SIMON (SUPRA)** I award the Plaintiff the entire sum of ₦1,500,000 as claimed as solicitor's fees.

Hon. Judge